

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

BOB McNEIL, an individual, on behalf of  
himself, and all others similarly situated,

Plaintiff,

v.

CAPITAL ONE BANK, N.A.,

Defendant.

CASE NO. 1:19-CV-00473

**PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY SUBMITTED IN  
OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COMPLAINT**

In further support of their Opposition to Defendant's Motion to Dismiss, Plaintiff submits the recent decisions of *Tannehill v. Simmons Bank*, 3:19-cv-140-DPM (E.D. Ark. Oct. 21, 2019) (attached as Exhibit A), *Garcia v. UMB Bank NA*, No. 1916-CV01874 (Jackson Co., MO Circuit Court Oct. 18, 2019) (attached as Exhibit B) and *Tisdale v. Wilson Bank and Trust*, No. 19-400-BC (Davidson Co. Tenn. Chancery Court Oct. 17, 2019) (attached as Exhibit C).

The *Tannehill*, *Garcia*, and *Tisdale* opinions all denied motions to dismiss where, as here, the defendant bank promised to assess a single NSF per "item." In doing so, the *Tannehill* court expressly referred to "the rather complicated ACH rules" that are also at issue here. In short, the decisions are relevant to several arguments advanced by Defendant in support of its motion to dismiss. Therefore, Plaintiff respectfully requests that the Court consider this authority in opposition to Defendant's motion to dismiss.

Dated: November 6, 2019

Respectfully submitted,

/s/ Steven M. Nathan

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**CERTIFICATE OF SERVICE**

I certify that on November 6, 2019, a true and accurate copy of the foregoing Plaintiff's Notice of Supplemental Authority Submitted in Opposition to Defendant's Motion to Dismiss was filed electronically with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Steven Nathan